

The Administrative Law Judge found that claimant was entitled to benefits under the Kansas Workers Compensation Act because the contract of employment between claimant and respondent was entered into in the state of Kansas. The respondent and insurance carrier request the Appeals Board review that finding. That is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds, as follows:

This claim for an accidental injury occurring in the state of Missouri is not compensable under the Kansas Workers Compensation Act as the contract of employment between the claimant and respondent was made outside of the state of Kansas. Therefore, the decision of the Administrative Law Judge that this claim is compensable under the Kansas Workers Compensation Act should be reversed.

The sole issue before the Appeals Board is whether the employment contract entered into between claimant and respondent was entered into within the state of Kansas. Under the provisions of K.S.A. 44-506, the Kansas Workers Compensation Act applies to injuries sustained outside the state where: 1) the principal place of employment is within the state; or, 2) the contract of employment was made within the state, unless such contract otherwise specifically provides. It is uncontroverted that the principal place of employment in this instance was the state of Missouri. Therefore, claimant's right to benefits hinges upon where the contract of employment was consummated.

In following the principals set forth by the Kansas Supreme Court in the cases of Neumer v. Yellow Freight System, Inc., 220 Kan. 607, 556 P.2d 202 (1976) and Pearson v. Electric Service Co., 166 Kan. 300, 201 P.2d 643 (1949), the Appeals Board finds that the contract of employment entered into between claimant and respondent in this instance was consummated in the state of Missouri. In Pearson, supra, the Court held that "where an acceptance is given by telephone the place of contracting is where the acceptor speaks his acceptance." *Ibid* at 302. In Neumer, supra, the offer was made by telephone by the employer in Kansas and accepted by the claimant in Tennessee, hence the contract was consummated in Tennessee. In Hartigan v. Babcock & Wilcox Co., 191 Kan. 331, 380 P.2d 383 (1963), an offer of employment made by the employer from Missouri and accepted by the claimant in Kansas was held to form a Kansas contract and the Kansas Act was accordingly found applicable to an accident which occurred in Missouri.

In the case now before us the respondent's agent telephoned claimant to discuss the effectiveness of guard dogs that were guarding respondent's property. At all times during this conversation, respondent's agent was present at his office located in the state of Missouri, and claimant was present in his office located in the state of Kansas. The evidence is uncontroverted that during this telephone conversation the claimant offered to personally guard the respondent's premises that weekend. Claimant contends the respondent accepted his offer during this telephone conversation. The respondent contends that the acceptance was not made until claimant met with a representative of respondent in Missouri. Whichever version is true is of no consequence as both lead to the same conclusion that the consummation of the contract would be deemed to be in Missouri. If respondent accepted claimant's offer during the telephone conversation, the contract is deemed consummated in the state of Missouri, because that is where respondent's agent "spoke his acceptance." If the offer was accepted when claimant visited the premises, the state of Missouri is again deemed to be the site of the contract as the acceptance occurred within that state. Therefore, the Kansas Workers Compensation Act does not apply to this work-related accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge Robert H. Foerschler, as set forth in his Award of June 21, 1994, should be, and hereby is, reversed, and that claimant is hereby denied benefits under the Kansas Workers Compensation Act for his accident of March 9, 1986.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, 40 Exec. Hills, Ste. 200, 7101 College Blvd., Overland Park, KS 66210
Frederick J. Greenbaum, PO Box 1300, Kansas City, KS 66117
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director